IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5606 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUPREME NON WOVENS PVT LTD. - Petitioner(s)
Versus
CHIEF CONTROLLING REVENUE AUTHORITY & 2 - Respondent(s)

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Appearance :
MS NIYATI K SHAH for Petitioner(s) : 1,MR.D K.PUJ for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the action initiated by the respondent authority in

connection with a document executed by the petitioner dated 28th February,1989.

2. Learned advocate for the petitioner mainly submitted that the document, which is at Annexure “B” is covered under Article 6 of Schedule-I of the Bombay Stamp Act,1958 and not under Article 36 of Schedule-I of the Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958). The order was passed by the Deputy Collector, in the month of May,1993, which is at Annexure “C” to the memo of the petition, is patently dehors the provisions of the Act,1958 and the facts of the present case. The Deputy Collector, Stamp Duty Valuation, Valsad has relied upon some report made by the office of the Auditor General. No such copy of the report was ever supplied to the petitioner. The order passed by the Deputy Collector is a non-speaking order. There is no discussion as to how the agreement in question (which is at Annexure “B” to the memo of the petition) is covered under Article 36 and not under Article 6 of Schedule-I of the Act,1958. Against that order, the petitioner had preferred a Revision Application under section 53 of the Act,1958. Several contentions were raised including that of Article 6, which is applicable to the disputed document. The Chief Controlling Revenue Authority, while passing the

order under section 53A of the Act has not discussed anything as to how the document is covered under Article 36 of Schedule-I of Act,1958. In fact, the document, at Annexure “B” to the memo of the petition is merely a deposit of title deeds and, therefore, is covered under Article 6 of Schedule-I of the Act,1958 and, therefore, as per Article 6, stamp duty has already been paid by the petitioner. Article 36 of Schedule I of the Act,1958, excludes the agreement relating to deposit of title deeds pown or pledge. Both the authorities below have failed to appreciate the fact that the impugned order at Annexure “B” is a mere deposit of title deeds, by way of security for repayment of the money. Even the petitioner has preferred an application under section 54(1A) of the Act,1958, but no decision has been taken by the respondent No.1 and during the pendency of such application under section 54(1A) of the Act of 1958, further Notices have been issued by the respondent No.3 for recovery of the amount under section 152 and 200 of the Bombay Land Revenue Code dated 3rd April,1999 and 21st July,1999 (Annexure “F” and “H” to the memo of the petition) respectively. The order passed by respondent No.1 is also a non-speaking order. The grievance raised by the petitioner that the document is covered under Article 6 and not under Article 36 has not been dealt

with by both the authorities below. Only one line has been referred in the order dated 8th February,1999 (Annexure “D” to the memo of the petition) that “as per Article 36, stamp duty is payable by the petitioner”. There is no discussion at all in the order passed by respondent No.1 and, thus, both the orders passed by respondent Nos.1 & 2 are non-speaking orders and the Notices issued by respondent No.3, at Annexure “F” and “H” to the memo of the petition, during the pendency of the application preferred by the petitioner under section 54(1A) of the Act,1958 and, therefore, the action initiated by the respondent deserves to be quashed and set aside, especially the order passed by respondent No.2, which is at Annexure “C” and the order passed by respondent No.1, which is at Annexure “D” to the memo of the petition and consequently, Notices issued by respondent no.3, which are at Annexure “F” and “H” deserve to be quashed and set aside and respondent No.1 may be directed to decide the application preferred by the petitioner under section 54(1A) of the Act,1958 (Annexure “E” to the memo of the petition).

3. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents, mainly submitted that the document, which is at Annexure “B” to the memo of the

petition was executed on 28th February,1989. Thereafter, on the basis of report of office of Auditor General, it was decided by respondent No.2 to levy the additional amount of the stamp duty as the document, which is at Annexure “B” is covered under Article 36 of Schedule-I of the Act,1958. The duty paid by the petitioner was as per Article 6 of Schedule-I of the Act,1958 and, therefore, the order was passed by Deputy Collector, Stamp Duty Valuation, Valsad in the month of May,1993 (Annexure “C” to the memo of the petition). Thereafter, a Revision Application has been preferred by the petitioner, which was also dismissed by the Chief Controlling Revenue Authority vide order dated 8th February,1999 under section 53A of the Act,1958 (Annexure “D” to the memo of the petition). Thus, there is a consistent findings of facts and, therefore, this Court may not interfere with the orders passed by the respondent authorities.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, the order passed in the month of May,1993 by Deputy Collector, Stamp Duty Valuation, Valsad in Case No.5.4/KSN-405/93 (Annexure “C” to the memo of the petition) as well as the order dated 8th February,1999 passed by the Chief Controlling Revenue

Authority, State of Gujarat, Gandhinagar in Stamp/Legal/Case No.36/94 (Annexure “D” to the memo of the petition) and consequently, the Notice issued by respondent No.3, which is at Annexure “F” and “H” dated 3rd April,1999 and 21st July,1999 respectively issued under the Bombay Land Revenue Code for the recovery of the amount under the Bombay Stamp Act,1958 require to be quashed and set aside, for the following facts and reasons:-

(i) Looking to the facts and circumstances of the case, the document, which is at Annexure “B” was executed on 28th February,1989, for which, the stamp duty was paid by the petitioner as per Article 6 of Schedule I of the Act,1958. Thereafter, on the basis of report made by the office of the Auditor General, it appears that the notices was issued by respondent No.3 and the decision has been taken by the respondent No.2 that petitioner was liable to make the payment of deficit stamp duty of Rs.2,87,000/- as per Article 36 of Schedule-I of the Act,1958 and the penalty of Rs.1,000/-. Looking to the nature of the order, it is a non-speaking order at all. No reasons have been given by the Deputy Collector, Stamp Duty Valuation, Valsad in his order passed in the month of May,1993 as to how the document, which has been

executed by the petitioner is covered by Article 36 and not by Article 6 of Schedule-I of the Act,1958.

(ii) The copy of the report made by the Auditor General has not been supplied to the petitioner. What is discussed in the report made by office of Auditor General is not known to the petitioner. Respondent No.2 i.e. Deputy Collector has relied upon the report made by the office of Auditor General without supplying copy to the petitioner this tantamounts to breach of principle of natural justice.

(iii) The order passed by respondent No.1 under section 53A of the Act,1958 has discussed the argument canvassed by the petitioner in paras 4 & 5 but there are no reasons given in para-6, which is only paragraph, whereby the application preferred by the petitioner were dismissed. Only one sentence has been written that the petitioner is liable to make the payment as per Article 36 of Schedule-I of the Act,1958. There is no discussion worth the name as to how the document is covered under Article 36 and not under Article 6 of Schedule-I of the Act,1958, as alleged by the petitioner. In the order dated 8th February,1999 passed by the respondent No.1, there is also a reference of report made by office of

Auditor General and there is no discussion worth the name in whole order, as to what was considered by the office of Auditor General. No such copy was ever given to the petitioner of the report of office of Auditor General. As this Court is remanding the matter to the Deputy Collector, Stamp Duty Valuation, Valsad for his fresh decision after considering all the arguments canvassed by the petitioner, it is not worthwhile for this Court to crystalise any view and fine nicety of Article 6 and Article 36 of Schedule-I of Act,1958. Suffice it will be at this stage to say that both the orders passed by respondent No.2 and, thereafter by respondent No.1 are non-speaking orders.

(iv) The Notices issued by respondent No.3, which are at Annexure “F” and “H” are consequences of the orders, which are at Annexure “C” (passed by respondent No.2) and order at Annexure “D” (passed by respondent No.1) and, therefore, both the Notices at Annexure “F” and “H” to the memo of the petition are also quashed, as the order at Annexure “C” is quashed and the matter is remanded to respondent No.2 for passing a speaking order.

5. As a cumulative effect of the aforesaid facts and circumstances of the case, I hereby quash and set

aside the order passed by the Deputy Collector, Valsad in the month of May,1993 (Annexure “C” to the memo of the petition); order dated 8th February,1999 passed by respondent No.1 (Annexure “D” to the memo of the petition) as well as Notices dated 3rd April,1999 and 21st July,1999 issued by respondent No.3 (Annexure “F” and “H” to the memo of the petition respectively) and I hereby remand the matter to respondent No.2 for a fresh decision, after giving an opportunity of being heard to the petitioner. If the respondent No.2 is relying upon any document, the copy of such document shall be supplied to the petitioner and thereafter, the respondent no.2 shall pass a fresh order, keeping in mind, the aforesaid observations. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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